

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the)
Subscriber Changes Provisions)
of the Telecommunications Act)
of 1996)
)
Policies and Rules Concerning)
Unauthorized Changes of Consumers')
Long Distance Carriers)
)
Talk.com Inc., Talk.com Holding Corp.,)
Access One Communications Corp.,)
The Other Phone Company, Inc. d/b/a)
Access One, and OmniCall, Inc.)
)
Request for Waiver)

CC Docket No. 94-129

PETITION FOR EXPEDITED WAIVER

Talk.com Inc., Talk.com Holding Corp. (combined "Talk.com"), Access One Communications Corp., The Other Phone Company, Inc. d/b/a Access One and OmniCall, Inc. (combined "Access One") (collectively "Petitioners"),¹ by their attorneys and pursuant to Section 1.3 of the Commission's Rules, respectfully petition the Commission to grant a limited waiver of 47 C.F.R Sections 64.1100 – 64.1190 as required to transfer certain presubscribed customers of Access One to Talk.com without first obtaining each subscriber's individual authorization and

¹ Talk.com Inc. currently has three utility subsidiaries that hold state telecommunications authorizations: Talk.com Holding Corp., The Other Phone Company, Inc. d/b/a Access One ("TOPC") and OmniCall, Inc. Talk.com Holding Corp. is a wholly owned subsidiary of Talk.com Inc. TOPC and OmniCall, Inc. are wholly owned subsidiaries of Access One Communications Corp., which in turn, is a wholly owned subsidiary of Talk.com Inc.

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verification.² The customers at issue all are located in the State of Georgia, and this Petition is filed as required to implement an agreement with and directive of the Georgia Public Service Commission (“Georgia PSC”).

As a result of a merger, as described more fully below, Petitioners have been operating as a single, consolidated group, albeit pursuant to separate operating authorizations. Petitioners are in the process of simplifying and streamlining their corporate structure and making the necessary regulatory filings. Eventually, Petitioners envision Talk.com Holding Corp. (“Talk Holding”) as the entity holding all the telecommunications authorizations and serving Talk.com customers.

In Georgia, all three entities currently hold telecommunications authorizations; however, Petitioners would like to consolidate so that Talk Holding is the only entity serving Talk.com customers. Talk Holding is authorized to provide *resold* long distance and local exchange services. Talk Holding seeks authority to provide *facilities-based* local exchange services throughout the BellSouth territory in Georgia through the use of UNE-P. Pursuant to a Consent Agreement issued by the Georgia PSC, Talk Holding will soon receive the desired facilities-based authority in Georgia, and all existing customers of Access One will be transferred to Talk Holding. By this petition, Petitioners request that the FCC facilitate the reassignment of customers from Access One to Talk.com. In addition, Petitioners respectfully request expedited treatment of this petition, to the extent necessary, to allow the Parties to effectuate the proposed transfer **60 days** after the date of the customer notification letter to be sent to affected customers.

² Pursuant to 47 C.F.R. §64.1150, prior to submitting a preferred carrier change, carriers must either: (1) obtain the subscriber’s written and signed authorization; (2) obtain confirmation from the subscriber via a toll-free number provided for the exclusive purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber’s order.

Talk Holding is a wholly owned subsidiary of Talk.com Inc., a publicly held Delaware corporation with principal offices at 12020 Sunrise Valley Drive, Suite 250, Reston, Virginia 20190. Talk Holding is authorized to provide a suite of intrastate local and/or long distance telecommunications services to business and residential customers virtually nationwide via resale or the use of UNE-Platform arrangements where feasible. Talk Holding also is authorized by the FCC to provide interstate and international telecommunications services.

The other subsidiaries of Talk.com Inc., TOPC and OmniCall, provide a combination of facilities-based and resold local and resold long distance telecommunications services to small and medium-sized business customers. TOPC is authorized to provide facilities-based and resold local and long distance telecommunications services in Georgia, Florida, North Carolina, Mississippi, South Carolina, Kentucky, Alabama, Tennessee and Louisiana. Prior to the merger described below, OmniCall was authorized to provide local telecommunications services in 16 states, and was authorized to provide long distance service in 32 states. Both TOPC and OmniCall are authorized by the FCC to provide interstate and international telecommunications services. Upon consummation of the merger of Talk.com Inc. and Access One Communications Corp. in August 2000, TOPC and OmniCall became wholly owned subsidiaries of Talk.com Inc., along with Talk Holding.

Petitioners now seek a limited waiver of the Commission's rules to permit Talk.com to be designated the carrier of record for the customers of Access One in Georgia, and as such, to assume the billing, customer care, and other functions associated with providing local exchange and interexchange services. Customers will not experience any change in rates, calling plans or service quality as a result of the transfer to Talk.com. The transition from Access One to Talk.com will be transparent to the customers.

Importantly, affected customers will be fully informed of the change. Access One and Talk.com will make reasonable attempts to contact each affected customer individually by mail to explain the process, and inform the customer of its rights and options, including the customer's right to select a carrier other than Talk.com. Specifically, Access One and Talk.com will send a notification letter to each of them in the form of *Attachment A* appended hereto. The letter, the terms of which have been negotiated between the Petitioners and the Georgia PSC, will inform customers of the automatic switch in their telecommunications service provider to Talk.com; that there will be no change to the customer service available to them; of the benefits of staying with Talk.com; that they will continue to receive all features, services and current low rates that they enjoy with Access One; of the option to change carriers if they prefer; and that if the customer opts to change to another carrier within 60 days of the date of the notification letter, Talk.com offers to pay any switching fee for the affected customer. The notification letter will also invite customers to dial Talk.com's toll-free number for more information. The Parties will work together to investigate and resolve any outstanding customer complaints regarding services provided by Access One.

Petitioners respectfully submit that the purposes of the Commission's LOA and verification rules would not be served by obtaining prior authorization and verification in order to switch the affected customers of Access One to Talk.com, and that the public interest is served by granting a waiver of those rules in these limited circumstances. Further, Petitioners fear that such a "re-presubscription" effort would prove confusing and frustrating to customers. Customers who do not understand the need to sign new forms, and fail to respond, could lose service altogether or pay potentially higher casual calling rates. Accordingly, Petitioners believe that any potential benefits of obtaining new authorizations are outweighed by the potential

detriments of such a program, and submit that all efforts will be taken to ensure that customers are not inconvenienced or harmed in any way. Indeed, Petitioners' goal is to be able to provide superior service and rates to affected customers as a result of the migration.

It is well-established that waiver of the Commission's Rules is appropriate if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.³ The party requesting waiver must show that the underlying purpose of the rule would not be served or would be frustrated, or that unusual or unique circumstances cause application of the rule to be unfair, unduly burdensome or contrary to the public interest.

In the instant case, the special circumstances requiring a deviation from the Commission's Rules include the need to ensure a seamless transition of local and, in some cases, long distance telecommunications service providers for the affected customers. If the Commission grants the waiver, it will protect against the possibility of customers losing local and, in some cases, long distance service altogether or being charged potentially higher casual calling rates. Moreover, the affected customers will be notified promptly of the process and their rights and options. By transferring customers by notification as described in this request, the policy goals of the Commission's authorization and verification requirements will be met more efficiently and consistent with the public interest. Indeed, the circumstances that justify grant of a waiver to Petitioners are analogous to those that the Commission has recently found to justify a waiver for many other carriers.⁴

³ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁴ See, e.g., *Talk.com, Inc. Talk.com Holding Corp. Petition for Waiver*, DA 00-1427 (rel. June 27, 2000); *Sprint Communications Company, Request for Waiver*, DA 00-620 (rel. Mar. 17, 2000); *Iowa Telecommunications Services, Request for Waiver*, 14 FCC Rcd 21319 (1999); *Conversent Communications, LLC, Request for Waiver*, 14 FCC Rcd (continued...)

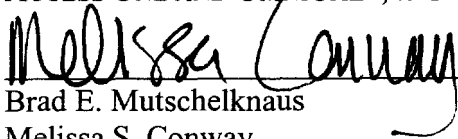
Perhaps most importantly, the requested waiver is required in order to implement an agreement between the Petitioners and the Georgia PSC, pursuant to which the Petitioners have agreed to consolidate their regulated operations within Georgia into a single corporate entity – Talk.com Holding – on a going-forward basis.

Accordingly, Petitioners respectfully request that the Commission waive its authorization and verification rules as set forth above. Expedited action on this waiver is requested to the extent necessary to allow the Parties to effectuate the customer migration **60 days** after the date of the customer notification letter to be sent to affected customers. A limited waiver of the Commission's LOA and verification rules will allow a seamless transfer that will be transparent and advantageous to customers.

Respectfully submitted,

TALK.COM INC., TALK.COM HOLDING CORP.,
ACCESS ONE COMMUNICATIONS CORP.,
THE OTHER PHONE COMPANY, INC. D/B/A
ACCESS ONE AND OMNICALL, INC.

By:


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Counsel to Talk.com

Dated: March 13, 2001

(...continued)

21316 (1999); *Excel Telecommunications, Inc., et al., Request for Waiver*, 14 FCC Rcd 16123 (1999).

ATTACHMENT A

March __, 2001

Dear Customer:

Access One Communications has recently merged into a subsidiary of TALK.com, one of the fastest growing telephone communications companies in the United States. Due to this merger, Access One is proud to announce that it will soon change its name to TALK.com and that all services that have been provided by Access One will now be billed and provided by TALK.com. TALK.com customers will continue to receive all features, services and current low rates that they enjoy with Access One today.

TALK.com (NASDAQ:TALK) is an approved Competitive Local Exchange Company operating throughout the nine state BellSouth territory. TALK.com offers a full line of services, including local, long distance, calling card, voice messaging, cellular and more.

You have the right to choose any carrier that is certified and currently providing service in your area. If you choose to change to a carrier other than TALK.com within sixty (60) days of the date of this letter, TALK.com will reimburse you for any switching fee you incur. If you do not choose another carrier within sixty days of the date of this letter, you will be transferred to TALK.com. Please be assured that we have made arrangements to ensure that your service will not be interrupted during this transition.

We at TALK.com look forward to meeting your telephone communications needs and are happy to answer any questions you may have regarding this notice or any of our services. If you have any questions, please contact us at 800-234-6305.

Cordially,

Gabriel A. Battista
Chairman
TALK.com

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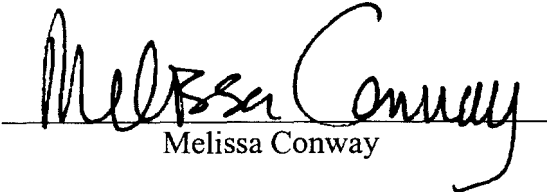
CERTIFICATE OF SERVICE

I, Melissa Conway, hereby certify that on this 13th day of March, 2001, a copy of the foregoing **PETITION FOR EXPEDITED WAIVER** was delivered by hand to the following:

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